

The Honorable Robert J. Bryan

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

UNITED STATES OF AMERICA,  
Plaintiff,  
v.  
JAY MICHAUD,  
Defendant.

NO. CR15-05351-RJB

## **GOVERNMENT'S MOTION FOR IN-CAMERA REVIEW**

*Noting Date: November 20, 2015*

The Government respectfully requests the Court's permission to file a sealed letter for *in-camera review, ex parte*. This letter will provide specific and articulable details related to an ongoing criminal investigation into the users of a website dedicated to the advertisement and distribution of child pornography that is related to this case, as further evidence of why vacating or modifying the stipulated Protective Order would seriously jeopardize the ongoing investigation into targets who engage in the sexual exploitation and abuse of children.

Rule 16 gives the court authority to deny, restrict or defer discovery upon a sufficient showing. The Ninth Circuit has approved a court's use of *in camera* review in order to protect the “[g]overnment’s interest in having FBI documents, which relate to an ongoing investigation, remain confidential.” *Meridian Int'l Logistics, Inc. v. United States*, 939 F.2d 740, 745 (9th Cir.

1 1991). Such authority to review materials *in camera* has also been recognized, among other  
2 contexts, where there is a “need . . . to keep sensitive information from the opposing party,”  
3 *United States v. Thompson*, 827 F.2d 1254, 1258 (9th Cir. 1987), to determine whether to reveal  
4 the identity of a government informant, *see, e.g.*, *United States v. McLaughlin*, 525 F.2d 517, 519  
5 (9th Cir. 1975), and to determine whether requested materials are subject to disclosure pursuant  
6 to *Brady v. Maryland*. *See United States v. Dupuy*, 760 F.2d 1492, 1501 (9th Cir. 1985) (*in*  
7 *camera* review of plea bargain notes); *United States v. Hsieh Hui Mei Chen*, 754 F.2d 817, 824  
8 (9th Cir. 1985) (*in camera* review of Border Patrol report).

9 At least one court has specifically used *in camera* review in the exact context as this case  
10 – where law enforcement seeks a protective order relating to information that could jeopardize an  
11 ongoing investigation. *See United States v. Smith*, 985 F. Supp. 2d 506, 530 (S.D.N.Y. 2013)  
12 (granting protective order after *in camera* review of letter containing specific details of ongoing  
13 investigation). In that case, the Government sought a protective order under Rule 16(d),  
14 explaining that “disclosure of the discovery materials might impede its ongoing investigations.”  
15 985 F. Supp. 2d 506, 530 (S.D.N.Y. 2013) (internal quotation marks omitted). “In particular, the  
16 Government contended that public dissemination of the discovery materials ‘[would] alert  
17 possible subjects of the investigation to the Government’s interest in them,’ and [would]  
18 ‘compromise the ability of individuals named in the discovery to assist the Government in its  
19 continuing efforts to ferret out wrongdoing by putting subjects on notice of the risk that these  
20 individuals [were] cooperating with law enforcement authorities.’” *Id.* at 530–31. The district  
21 court observed that “materials, including even judicial documents which are presumptively  
22 accessible, can be kept from the public if their dissemination might ‘adversely affect law  
23 enforcement interests.’” *Id.* at 531 (quoting *United States v. Amodeo*, 71 F.3d 1044, 1050 (2d  
24

1 Cir. 1995)). “Thus, where public disclosure of certain materials might officially reveal the  
2 sources and methods law-enforcement officials have used, and will continue to use, to  
3 investigate other criminal conduct related to the publicly filed charges, courts have found it  
4 appropriate to enter a protective order.” *Id.* (citing cases).  
5

6 In *Smith*, the government provided a sealed letter for *in camera* review in which it  
7 “provided specific details of ongoing investigations that [were] related to the discovery materials  
8 . . . in [the] case.” *Id.* The court found that “the letter adequately establishe[d] both that there  
9 [were] ongoing investigations into criminal conduct related to the discovery materials . . . and  
10 that public disclosure of some of these materials plausibly could undermine these investigations”  
11 by “reveal[ing] the targets of the investigations and the suspected criminal conduct being  
12 investigated,” “disclos[ing] the type of evidence being collected,” and “officially confirm[ing]  
13 who some of the cooperating witnesses in the[] investigations [were].” *Id.* at 531–32. That  
14 information, “should it become publicly available,” the court concluded, “could alert the targets  
15 of the investigation and could lead to efforts by them to frustrate the ongoing investigations.” *Id.*  
16 at 532. The government requests that the Court allow it to follow the same procedure here.  
17  
18 //  
19 //  
20 //  
21 //  
22 //  
23  
24  
25  
26  
27  
28

1 For the above-stated reasons, the United States respectfully requests permission to file  
2 sealed letter for *in-camera review, ex parte*.

3 DATED this 6th day of November, 2015.  
4

5 Respectfully submitted,  
6 ANNETTE L. HAYES  
7 United States Attorney

8 /s/S. Kate Vaughan  
9 S. KATE VAUGHAN  
10 Assistant United States Attorney

11 s/Keith A. Becker  
12 KEITH BECKER  
13 Trial Attorney

14 NY Bar Number: 4287967  
15 Attorney for Plaintiff  
16 U.S. Department of Justice,  
17 Criminal Division  
18 Child Exploitation and Obscenity Section  
19 1400 New York Ave. NW, Sixth Floor  
Washington DC, 20005  
Telephone: (202) 305-4104  
Fax: (202) 514-1793  
E-Mail: Keith.Becker@usdoj.gov

1                   CERTIFICATE OF SERVICE  
2  
3  
4  
5

I hereby certify that on November 6, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorney(s) of record for the defendant(s).

6  
7  
8                   *s/ Rebecca Eaton* \_\_\_\_\_  
9                   REBECCA EATON  
10                  Legal Assistant  
11                  United States Attorney's Office  
12                  700 Stewart Street, Suite 5220  
13                  Seattle, Washington 98101-1271  
14                  Phone: 206-553-5127  
15                  Fax: 206-553-0755  
16                  E-mail: [rebecca.eaton@usdoj.gov](mailto:rebecca.eaton@usdoj.gov)  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28